IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.L.P..No. 889 of 2007()

ST.35/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT - III, KOLLAM

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PETITIONER/COMPLAINANT:

C.RAVEENDRAN PILLAI,
S/O CHELLAPPAN, CHELLAM,
PUNTHALATHAZHAM, KOLLAM.

BY ADVS. SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR

RESPONDENTS: ACCUSED & STATE

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1. A.MUHAMMED YOOSUFF,
KEISEE BROTHERS, MAIN ROAD,
KOLLAM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED.

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 889 OF 2007

Dated this the 15th day of October, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in S.T. No.35 of 2004 on the file of the Judicial First Class Magistrate's Court III, Kollam.

2. The case of the petitioner - complainant was that the first respondent - accused had borrowed from him an amount of Rs.1,15,000/- and issued Ext.P1 cheque towards discharge of the said liability which when presented to the bank for encashment was dishonoured with the endorsement "exceeds arrangement". After complying with the statutory provisions regarding notice and seeing that the amount covered by the cheque was not repaid, the complaint was filed. To prove the case against the accused, the complainant himself was examined as PW.1 and Exts.P1 to P5 were produced. On the side of the defence, the accused was examined as DW.1 and Exts.D1 and D2 were produced. After closing the evidence of the complainant, the accused was questioned under Section

313 Cr.P.C. Denying the transaction alleged in the complaint, the accused stated that he had issued 12 signed cheques for Rs.15,000/- each and one signed cheque for Rs.20,000/- towards the consideration of Rs.2,00,000/- for a tempo van which he purchased from the wife of the petitioner - complainant. He further stated that 12 cheques were presented in the account of the wife of the petitioner - complainant and that one cheque for Rs.15,000/- was misused by the petitioner. After considering the entire evidence, the trial court found the first respondent - accused not guilty of the offence alleged against him and acquitted him.

3. The specific case of the complainant was that the accused had issued Ext.P1 cheque in his favour towards repayment of an amount of Rs.1,15,000/- which the accused had borrowed from him. The case set up by the first respondent - accused was that he had purchased a tempo van from the wife of the petitioner for Rs.2,00,000/- and issued 13 cheques for repayment of the said amount in instalments and that one of the cheques for Rs.15,000/- was altered by the petitioner - complainant to Rs.1,15,000/- and misused by him for filing the complaint. The trial court found that the petitioner - complainant failed to prove the transaction between himself and the accused. The trial court also found that there was some overwriting in Ext.P1 cheque. It has also come out in evidence that the

first respondent - accused had filed an application for sending the cheque in question for expert opinion. The said application was opposed by the petitioner and it was dismissed. This would show that the cheque in question was altered materially. If so, the case set up by the accused is correct.

4. After hearing the learned counsel appearing for the petitioner and perusing the impugned judgment, this Court is of the view that the finding of the trial court is based on evidence and it requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

OCTOBER, 2007